
FINAL RECOMMENDATIONS FOR THE CALIFORNIA STATE ATHLETIC COMMISSION

RECOMMENDATIONS OF THE JOINT SUNSET REVIEW COMMITTEE AND THE DEPARTMENT OF CONSUMER AFFAIRS (DEPARTMENT)

ISSUE #1. (CONTINUE TO REGULATE AND LICENSE ALL OF THOSE DIRECTLY INVOLVED WITH BOXING AND MARTIAL ARTS EVENTS?) Should the Commission continue to regulate all professional and amateur boxing and full-contact martial arts events? And to license professional boxers, amateur/professional martial art fighters, promoters, managers, seconds, matchmakers, referees, judges, timekeepers, gymnasiums, and professional and amateur clubs?

Recommendation #1: *The Joint Committee and the Department recommends that the state continue regulating boxing and other contact sports.*

Comments: Concern for public health and safety and the physical and financial well-being of athletes in these sports requires ongoing state regulation of the profession. Industry changes, including the evolution of new and more aggressive martial arts matches, the movement of high-stakes boxing events to tribal lands, and women entering the profession, may necessitate an even higher level of state involvement.

ISSUE #2. (CONTINUE WITH THE COMMISSION?) Should the Commission be continued, or its role be limited to an advisory body and the remaining functions be transferred to the Department?

Recommendation #2: *Given the need for regulation of this industry, the Joint Committee and Department recommends continuing the present regulatory structure of the Commission.*

Comments: Recent improvements to the physical and neurological examinations for boxers and aggressive efforts to retain oversight of events broadcast on cable television indicate a strong consumer protection mission at the Commission. The Department and the Joint Committee have not been presented with any information suggesting a need to change the regulatory structure for this profession, although its reliance on general funds is arguably a concern.

ISSUE #3. (REVIEW ECONOMIC VIABILITY OF THE LICENSING PROGRAM?) The sources of funding for the Commissions various programs is eroding due in part to the fluctuation in the number of events held within the state, the increased use of Indian casinos to hold boxing matches, and its inability to receive a 5 percent tax on pay-per-view boxing broadcasts.

Recommendation #3: *The Joint Committee and the Department recommends that the Commission review whether their licensing fees should be increased and identify alternative funding mechanisms to ensure that its critical consumer protection is continued.*

Comments: The Department agrees with the Joint Committee that the Commission's economic viability is in jeopardy. A number of factors contribute to the Commission's inability to be self-funding and its continued reliance on the General Fund. (The Commission is the only Department licensing program to receive General Fund support.) First, the license renewal system creates unstable revenues because they fluctuate as the number of events held in the state changes. Second, declining contributions to the pension plan and neurological examination program are jeopardizing the overall funding of the Commission. This decline in revenues can be attributed to the movement of fights to tribal lands, which limits the Commission's ability to collect its standard licensing fees. (Under the federal Professional Boxing Safety Act of 1996, the Commission is allowed to supervise boxing events on tribal lands, but is prohibited from applying its standards licensing fees, ticket assessments, to those events.) Third, the Commission's most recent effort to establish an alternative funding source failed when a federal court enjoined the Commission from applying its normal event tax on pay-per-view broadcasts. The loss of this funding source (up to \$800,000 in potential annual revenues) has seriously hindered the Commission's ability to be self-funding.

ISSUE #4. (TAKE STEPS TO PROVIDE SUSTAINABLE PENSION PLAN FOR BOXERS?) The Commission's statutorily mandated pension plan for boxers also appears to be facing a serious funding shortfall, and for the same reasons already stated. Additionally, the pension fund's reserves are decreasing as eligible boxers begin to collect their retirement benefits.

Recommendation #4: *The Joint Committee and the Department recommends that the Commission take the following steps to make the pension fund sustainable:*

- *Negotiate revisions to the fee for overseeing events on tribal lands.*
- *Review the current level of ticket assessments.*
- *Conduct an actuarial review of the fund to determine its future solvency needs.*

Comments: As noted by the Joint Committee, the Commission's statutorily mandated pension plan for boxers also appears to be facing a serious funding shortfall. Here too, the movement of events to tribal lands is limiting the Commission's ability to perform its responsibilities. Because it is unable to collect ticket assessments, which are the primary funding source for the pension plan, the Commission is instead receiving a flat fee of \$1,500 per event held on tribal lands. This flat fee structure is not generating sufficient funding to accommodate current responsibilities or future growth in the pension program.

ISSUE #5. (OTHER ACTIONS NECESSARY TO DEAL WITH FUNDING AND AUTHORITY OF THE COMMISSION?) Are there additional actions or steps which could be taken to deal with the impending fiscal crisis of the Commission, and to determine what legitimate authority the Commission may have over boxing and martial art fights held on sovereign tribal lands?

Recommendation #5: *The Joint Committee recommends that the Commission should pursue an opinion from the Attorney General on what authority it may have to enforce its health and safety standards for boxing matches held in Indian casinos and what assessments of the Commission's may be collected. The Joint Committee shall seek a Legislative Counsel opinion on whether legislation could be reenacted in conformance with current case law to allow an assessment on pay-per-view boxing broadcasts.*

Comments: In addition to the steps recommended by the Joint Committee and the Department, it should be clear what legal authority currently exists for the Commission as it involves boxing matches which are held at Indian casinos. As yet, there has been no formal legal opinion issued by the Department or the Attorney General's Office. Also, it was argued by the Center for Public Interest Law, that there may be a way to rewrite the law, conforming to current case law, so that the Commission could collect a fee on pay-per-view boxing broadcasts, which it originally intended to do under Section 18830 of the Business and Professions Code.

ISSUE #6. (REVIEW WHETHER MANDATORY PREGNANCY TESTING IS NECESSARY?) Should pregnancy testing of female boxers/fighters be required and under what conditions?

Recommendation #6: *The Joint Committee shall seek a Legislative Counsel Opinion to determine if the Commission has current authority to set regulatory standards for pregnancy testing. If not, then the Commission should conduct a public hearing to address this issue before pursuing legislation to grant it authority to establish standards for pregnancy testing.*

Comments: One of the most controversial issues facing the Commission is the pregnancy testing of boxers and martial arts fighters. As the popularity of female boxing increases, there is a growing concern about the consequences that may arise from female athletes fighting while pregnant. California is one of the few states that does not mandate this type of medical examination. It is not clear whether the Commission may already have authority to pass regulatory standards for pregnancy testing, rather than having to seek legislative authority. However, if it does not have the authority to set regulatory standards for pregnancy testing, it should only pursue legislative authority after it has addressed the following issues at a public hearing:

- a) Whether pregnancy will automatically disqualify a woman from licensure?
- b) Whether this "finding" could be done by a boxer disclosure procedure?
- c) Whether it will be the examining physician's duty to determine the health and physical condition of the prospective boxer before she enters any sanctioned fight or match?
- d) Whether liability will rest with the promoter, boxer, and examining physician – not the Commission?
- e) How to address privacy concerns and how to keep pregnancy information confidential?

ISSUE #7. (COMMISSION'S INSPECTORS HAVE ADEQUATE AND INDEPENDENT ENFORCEMENT AUTHORITY?) Should there be changes to the qualifications for employment of the Commission's inspectors to assure they have the appropriate experience and background to deal with violations of the Boxing Act?

Recommendation #7: *The Joint Committee recommends that the Department and the Commission should review whether peace officer status for the Commission's inspectors is necessary, or whether other qualifications for employment should be required to assure inspectors have adequate and independent enforcement authority.*

Comments: There is some question as to whether Commission inspectors have adequate and independent authority to fully enforce the Boxing Act. Violations of the Act may involve criminal activity and may include other activities or investigations that may result in criminal prosecution in which investigators with peace officer status may be appropriate. Some of the cases of the Athletic Commission may also involve complex issues where experienced investigative techniques would be required. Almost all of the Commission's inspectors are "event only" employees. They are mostly part-time employees who hold other full-time jobs, are retired, or are otherwise employed by the Commission in full-time position classifications in addition to the inspector classification. Also, most inspectors, pursuant to the experience requirements of the classification, are experienced with or formerly connected with the boxing industry.

ISSUE #8. (IS THERE ADEQUATE PROTECTION FOR STUDENT ATHLETES FROM HEAD RELATED INJURIES?) Student athletes are experiencing, at an increasing rate, the same type of head related injuries that boxer/fighters receive in their sport. Although not an issue directly related to the Commission, it appears as if some of the same safety and health standards required by the Commission should be considered for student athletes who are participating in contact sports.

Recommendation #8: *The Joint Committee, in conjunction with the Senate Education Committee, shall hold a public hearing to review this issue. The Commission's safety standards and requirements to protect boxers/fighters against head related injuries might serve as a model to assure the safety and health of student athletes.*

Comments: There appears to be an increase in neurological type injuries to athletes, both in the sports regulated by the Commission, and those in which the Commission has no authority. In a 1997 report by the National Collegiate Athletic Association (NCAA), it stated that "nine of every 10 head injuries in football are reported as concussions, and that this was the highest recorded in the sport since 1986. (At this time, staff has not been able to obtain any information related to the extent of head injuries for California high school athletes.) Although this issue is not related to the Commission's responsibility or jurisdiction, it is of a serious enough nature to be considered by the Joint Committee since the Commission has dealt directly with these types of injuries and has established standards for the protection of the athletes it regulates. The Senate Education Committee should also be involved, since high school sports are generally governed by the Department of Education, local school districts and the California Interscholastic Federation.